



NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[NRC-2020-0269]

RIN 3150-AK56

Extending the Duration of the AP1000 Design Certification

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule and issuance of environmental assessment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to update the design to reflect changes provided by Westinghouse Electric Company LLC and to extend the duration of the AP1000 design certification for an additional 5 years. The NRC is also issuing an environmental assessment.

DATES: The final rule is effective **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, unless significant adverse comments are received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the *Federal Register*. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Office of the Federal Register as of **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0269. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Email comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Doyle, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-3748, email: Daniel.Doyle@nrc.gov, or Bruce Baval, Office of Nuclear Reactor Regulation, telephone: 301-415-6715, email: Bruce.Baval@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information.

Please refer to Docket ID NRC-2020-0269 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0269.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the Availability of Documents section.

- **Attention:** The Public Document Room, where you may examine and order copies of public documents, is currently closed. You may submit your request via email at PDR.Resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

- **Attention:** The Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, is open by appointment only. Interested parties may make appointments to examine documents by contacting the NRC Technical Library by email at Library.Resource@nrc.gov between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments.

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2020-0269 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS. Comments received after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule also will be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the *Federal Register*.

II. Rulemaking Procedure

Because the NRC anticipates that this action will be non-controversial, the NRC is using the “direct final rule procedure” for this rule. The rule will become effective on **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. However, if the NRC receives significant adverse comments by **[INSERT**

DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*],

then the NRC will publish a document that withdraws this direct final rule and will subsequently address the comments received in any final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC does not intend to initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment in which the commenter explains why the rule (including the environmental assessment) would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if it meets the following criteria:

1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3) The comment causes the NRC to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the ADDRESSES section in the companion proposed rule published in the Proposed Rules section of this issue of the *Federal Register*.

III. Background

The NRC is amending the design certification (DC) for the AP1000 standard plant design to extend the duration of the DC for 5 years, as proposed by the NRC staff in SECY-20-0082, “Rulemaking Plan to Extend the Duration of the AP1000 Design Certification,” dated September 8, 2020 (“rulemaking plan”), and approved by the Commission in SRM-SECY-20-0082, dated November 17, 2020. To issue this extension, the NRC must conclude that the standard design continues to meet the applicable standards and requirements of the Atomic Energy Act of 1954, as amended (the AEA), and the Commission’s regulations. This action allows an applicant to reference the AP1000 design certification while the Commission considers potential changes to the duration and renewal of future and currently valid design certifications more broadly in a separate, ongoing rulemaking (Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing NRC-2009-0196; RIN 3150-AI66). The NRC also is updating the DC to reflect changes provided by Westinghouse Electric Company LLC (Westinghouse), by letter dated March 19, 2021 (ADAMS Accession No. ML21081A023).

The purpose of the amendment is to extend by 5 years the period that the AP1000 DC is valid for referencing by an applicant and to include design changes previously approved by the NRC in multiple combined license proceedings. The extended duration aligns with the extended renewal period previously granted by the NRC to Westinghouse for the AP1000 DC in its exemption issued by letter dated February 14, 2018 (ADAMS Accession No. ML17265A099). With this duration extension, the AP1000 DC remains valid for referencing until February 27, 2026.

The AP1000 DC in appendix D, “Design Certification Rule for the AP1000 Design,” to part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” of title 10 of the *Code of Federal Regulations* (10 CFR) expired on February 27, 2021. By letter dated June 26, 2020, Westinghouse requested that the NRC extend the duration of the AP1000 DC by 5 years, retroactive to the expiration date.

IV. Discussion

In the rulemaking plan, the NRC staff acknowledged that there were known design issues that it would need to assess in the rulemaking to determine their impact on the necessary safety and environmental findings. The following five aspects of the design were discovered to have issues after the NRC updated the design certification rule to incorporate Revision 19 of the AP1000 design control document (DCD) (ADAMS Accession No. ML11171A500) on December 30, 2011: 1) passive core cooling system containment condensate return, 2) main control room dose, 3) main control room heatup, 4) hydrogen vent inspections, tests, analyses, and acceptance criteria (ITAAC), and 5) neutron flux logic operating bypass. Combined license holders and applicants have previously referenced and resolved these five design issues, and the NRC has approved the same changes to address the issues in multiple combined license applications and amendments.

After the NRC staff began assessing the known design issues for the rulemaking, Westinghouse indicated its preference to update the design to reflect the changes made in the previous applications referencing the AP1000 design. By letter dated March 19, 2021 (ADAMS Accession No. ML21081A023), Westinghouse submitted applicable AP1000 DCD markups and references that illustrate how: 1) the five issues have been corrected based on construction of the current AP1000 reactors for Southern Nuclear Company Vogtle Electric Generating Plant, Units 3 and 4, and 2) Westinghouse has marked up the referenced DCD in accordance with those changes. The NRC staff used

these references to verify the Westinghouse submitted DCD markups are the same as the design changes the NRC has previously reviewed and approved to address the design issues.

The NRC staff verified, as documented in the NRC staff's Verification Evaluation Report, that the corrected information provided in the markups is the same as has been previously reviewed and approved by the NRC for various combined license and license amendment applications. In reviewing those applications, the NRC staff determined that the design changes resolved the identified design issues, met the applicable regulations, and that the design as modified met the applicable requirements of the AEA and the NRC's regulations. Neither the applicable provisions of the AEA nor the NRC's regulations have changed since those applications were approved. Therefore, the NRC concludes that the relevant safety findings reached in the NRC staff reviews of those prior applications apply to the AP1000 design changes incorporated by this final rule and that the standard design, as modified by those changes, meets the applicable standards of the AEA and the NRC's regulations.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes in this direct final rule.

Appendix D to Part 52—Design Certification Rule for the AP1000 Design

This direct final rule amends appendix D to 10 CFR part 52 to incorporate amendments to the AP1000 generic design and to extend the duration of the design certification for the AP1000 standard plant design for 5 years.

II. Definitions

This final rule revises paragraph A by making “document” and “is” plural.

III. Scope and Contents

This final rule revises paragraph A to include new documents. It also amends paragraph D by adding new paragraph D.3. to clarify which document controls if there is a conflict between the generic DCD and any of the safety evaluations listed in new paragraphs D.3.a. through D.3.f.

V. Applicable Regulations

This final rule adds a new paragraph A.3. to show the regulations that are applicable to the generic AP1000 design as amended.

VI. Issue Resolution

This final rule revises paragraphs B.1. to include the Verification Evaluation Report and note that the documents referenced in this paragraph have been amended by the supplemental information submitted by Westinghouse. It revises paragraph B.7 to include the NRC's final environmental assessment of the amendment and extension of the AP1000 DC.

VII. Duration of this Appendix

This final rule revises the period of reference for Appendix D from 15 years to 20 years.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this direct final rule does not have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants or would apply to own such a plant

do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

VII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this direct final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are NRC approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for combined licenses or construction permits. For these reasons, the NRC concludes that preparation of a regulatory analysis is neither required nor appropriate.

VIII. Backfitting and Issue Finality

The NRC has determined that this direct final rule does not constitute backfitting as defined in the backfit rule (§ 50.109) and does not affect the issue finality of any approval issued under 10 CFR part 52.

This final rule extending the duration of the AP1000 design certification and adopting design changes does not constitute backfitting as defined in the backfit rule because the extension of the design certification does not affect any previously issued licenses. In addition, the design changes do not constitute backfitting because all existing licenses referencing the AP1000 standard design have previously been amended to adopt the same design changes incorporated by this rule, and the rule therefore does not result in modifications or additions to those facilities.

This rule does not affect the issue finality of any approval issued under 10 CFR part 52 because the AP1000 design certification is not currently in effect under §§ 52.55 or 52.61, and therefore issue finality under § 52.63(a) does not apply to the AP1000 design certification rule.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

X. Environmental Assessment and Final Finding of No Significant Impact

The NRC has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the NRC’s regulations in subpart A, “National Environmental Policy Act—Regulations Implementing Section 102(2),” of 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” that this direct final rule, if confirmed, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC’s generic determination in this regard, reflected in § 51.32(b)(1), is based upon the following considerations. A design certification rule does not authorize the siting, construction, or operation of a facility referencing any particular design, but only codifies a standard design certification in a rule (extending the AP1000 design certification and incorporating changes to the design in this case). The NRC will evaluate the environmental impacts and issue an

environmental impact statement as appropriate under NEPA as part of the application for the construction and operation of a facility referencing any particular design certification rule.

The determination of this environmental assessment is that there will be no significant environmental impact from this action. The environmental assessment is available as indicated in the Availability of Documents section.

XI. Paperwork Reduction Act

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing collections of information were approved by the Office of Management and Budget, control number 3150-0151.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget control number.

XII. Congressional Review Act

This direct final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

XIII. Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement States Programs,” approved by the Commission on June 20, 1997, and published in the *Federal Register* (62 FR 46517; September 3, 1997), this rule is classified as compatibility “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act or the provisions of 10 CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with a particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

XIV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. Design certifications are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees must comply. Design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications are initiated by an applicant for rulemaking, rather than by the NRC. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

DOCUMENT	ADAMS ACCESSION NO. / <i>FEDERAL REGISTER</i> CITATION
Environmental Assessment by the U.S. Nuclear Regulatory Commission Relating to Extension of the AP1000 Standard Design Certification Docket No. 52-006, dated September 1, 2021	ML21181A109
Reactor Regulatory History on Design Certification Rules, dated April 26, 2000 ¹	ML003761550
SECY-20-0082, "Rulemaking Plan to Extend the Duration of the AP1000 Design Certification," dated September 8, 2020	ML20252A153
Staff Requirements Memorandum for SECY-20-0082, "Rulemaking Plan to Extend the Duration of the AP1000 Design Certification," dated November 17, 2020	ML20322A047
U.S. Nuclear Regulatory Commission Verification Evaluation Report, dated May 11, 2021	ML21131A221
Westinghouse AP1000 Design Control Document Revision 19, dated June 13, 2011	ML11171A500
NRC Letter for the Staff Evaluation of the Westinghouse Request for Exemptions Related to the Duration of the AP1000 Design Certification, dated February 14, 2018	ML17265A099
Westinghouse Electric Company LLC – AP1000 Design Certification Extension Request, dated June 26, 2020	ML20178A640
Westinghouse Electric Company LLC, Supplemental Information to Support the AP1000 Design Certification Extension (Non-proprietary), DCP_NRC_003343, dated March 19, 2021	ML21081A023
Safety Evaluation – Issuance of Amendment Nos. 72 and 71 for Southern Nuclear Company, Inc., Vogtle Units 3 and 4, Respectively, License Amendment Request (LAR) 16-026, dated February 27, 2017	ML17024A307

¹ The regulatory history of the NRC's design certification reviews is a package of documents that is available in the NRC's Public Document Room and NRC Library: Reactor Regulatory History on Design Certification Rules, April 26, 2000. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs. This document predates this rulemaking and therefore does not contain a regulatory history for this rulemaking.

Safety Evaluation – Amendment Nos. 123 and 122 for Southern Nuclear Company, Inc., Vogtle Electric Generating Plant Units 3 and 4, Respectively, LAR-17-023, dated April 20, 2018	ML18085A628
Safety Evaluation – Amendment Nos. 108 and 107 for Southern Nuclear Company, Inc., Vogtle Units 3 and 4, Respectively, LAR-17-001, dated February 1, 2018	ML18011A894
Safety Evaluation – Amendment Nos. 84 and 83 for Southern Nuclear Company, Inc., Vogtle Units 3 and 4, Respectively, LAR-17-003, dated August 23, 2017	ML17213A224
Safety Evaluation – Amendment Nos. 71 and 70 for Southern Nuclear Company, Inc., Vogtle Units 3 and 4, Respectively, LAR-16-006, dated February 24, 2017	ML16320A174
Safety Evaluation – Florida Power and Light Company’s Turkey Point Nuclear Generating Units 6 and 7, FSER Chapter 16, “Technical Specifications,” dated November 10, 2016	ML16266A185

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2020-0269.

XVI. Procedures for Access to Proprietary and Security-Related Information for Preparation of Comments on the Direct Final Rule

This section contains instructions regarding how the non-publicly available documents related to this rule, and specifically the information contained in Enclosure 2 and Enclosure 4 of the March 19, 2021, letter from Westinghouse, “Information Submittal Related to the AP1000 Design Certification Extension,” may be accessed by interested persons who wish to comment on the design certification extension. These documents contain proprietary information and security-related information.

Interested persons who desire access to proprietary information or security-related information on the AP1000 design certification extension should first request access to that information from Westinghouse Electric Company LLC, the design certification applicant. A request for access should be submitted to the NRC if the

applicant does not either grant or deny access by the 10-day deadline described in the following section.

Submitting a Request to the NRC for Access

Within 10 days after publication of this direct final rule, any individual or entity who believes access to proprietary information or security-related information is necessary in order to submit comments on this rule may request access to such information. Requests for access to proprietary information or security-related information submitted more than 10 days after publication of this document will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

The requestor shall submit a letter requesting permission to access proprietary information or security-related information to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. The email address for the Office of the Secretary is Rulemaking.Comments@nrc.gov. The requestor must send a copy of the request to the design certification applicant at the same time as the original transmission to the NRC using the same method of transmission. Requests to the applicant must be sent to Zachary S. Harper, Manager, Licensing Engineering, Westinghouse Electric Company LLC, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

The request must include the following information:

- (1) The name of this design certification, AP1000 Design Certification; the rulemaking identification number, RIN 3150-AK56; the rulemaking docket number, NRC-2020-0269; and the *Federal Register* citation for this rule.
- (2) The name, address, and email or fax number of the requestor.
- (3) The identity of the individual(s) to whom access is to be provided, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the information.

- (4) The requestor's need for the proprietary information or security-related information in order to prepare meaningful comments on the design certification extension must be demonstrated. Each of the following areas must be addressed with specificity:
- (a) The specific issue or subject matter on which the requestor wishes to comment.
 - (b) An explanation why information which is publicly available is insufficient to provide the basis for developing meaningful comment on the AP1000 design certification extension rule with respect to the issue or subject matter described in paragraph 4.a. of this section.
 - (c) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested information to provide the basis for meaningful comment. Technical competence may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.
 - (d) A chronology and discussion of the requestor's attempts to obtain the information from the design certification applicant, and the final communication from the requestor to the applicant and the applicant's response, if any was provided, with respect to the request for access to proprietary information or security-related information must be submitted.

Based on an evaluation of the information submitted under paragraph (4) of this section, as applicable, the NRC will determine within 10 days of receipt of the request whether the requestor has established a legitimate need for access to proprietary information or security-related information.

Determination of Legitimate Need for Access

If the NRC determines that the requestor has established a legitimate need for access to proprietary information or security-related information, the NRC will notify the

requestor in writing that access to proprietary information or security-related information has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit by each individual who will be granted access.

Filing of Comments on the AP1000 Design Certification Extension Rule Based on Non-Public Information

Any comments on this final rule that are based upon the disclosed proprietary information or security-related information must be filed by the requestor no later than 25 days after receipt of (or access to) that information, or the close of the public comment period, whichever is later. The commenter must comply with all NRC requirements regarding the submission of proprietary information and security-related information to the NRC when submitting comments to the NRC (including marking and transmission requirements).

Review of Denials of Access

If the request for access to proprietary information or security-related information is denied by the NRC after a determination on requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with the NRC's Executive Director for Operations under § 9.29(d).

XVII. Incorporation by Reference—Reasonable Availability to Interested Parties

The NRC is incorporating by reference a document submitted by Westinghouse that updates the AP1000 DC, Revision 19. As described in the Discussion section of this document, the information submitted by Westinghouse includes the applicable AP1000 DC markups and references that illustrate how the five known design issues have been corrected and how Westinghouse has marked up the referenced DCD in accordance with those changes.

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register. The Office of the Federal Register's requirements for incorporation by reference are set forth in 1 CFR part 51. These regulations require an agency to include in a direct final rule a discussion of the ways that the materials the agency incorporates by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for direct final rules as set forth in 1 CFR 51.5(b)(2).

The NRC considers "interested parties" to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogeneous group but vary with respect to the considerations for determining reasonable availability. Therefore, the NRC distinguishes between different classes of interested parties for the purposes of determining whether the material is "reasonably available." The NRC considers the following to be classes of interested parties in NRC rulemakings with regard to the material to be incorporated by reference:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, "small entities" has the same

meaning as a “small entity” under § 2.810.

- Large entities otherwise subject to the NRC’s regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals) and who are subject to the material to be incorporated by reference by rulemaking. In this context, “large entities” are those that do not qualify as a “small entity” under § 2.810.

- Non-governmental organizations with institutional interests in the matters regulated by the NRC.

- Other Federal agencies, States, local governmental bodies (within the meaning of § 2.315(c)).

- Federally-recognized and State-recognized² Indian tribes.

- Members of the general public (i.e., individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC’s regulatory oversight) who may wish to gain access to the materials which the NRC incorporates by reference by rulemaking in order to participate in the rulemaking process.

The NRC makes the materials incorporated by reference available for inspection to all interested parties, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301-415-7000; email: Library.Resource@nrc.gov. In addition, as described in the Availability of Documents section, documents related to this direct final rule are available online in the NRC’s Agencywide Documents Access and Management System (ADAMS) Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>.

The NRC concludes that the materials the NRC is incorporating by reference in this final rule are reasonably available to all interested parties because the materials are available to all interested parties in multiple ways and in a manner consistent with their interest in the materials.

² State-recognized Indian tribes are not within the scope of 10 CFR 2.315(c). However, for purposes of the NRC’s compliance with 1 CFR 51.5, “interested parties” includes a broad set of stakeholders, including State-recognized Indian tribes.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Issue finality, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 52:

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

1. The authority citation for part 52 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

2. In appendix D to part 52:
 - a. Revise sections II.A, III.A, VI.B.1, VI.B.7, and VII; and
 - b. Add sections III.D.3 and V.A.3.

The revisions and additions read as follows:

APPENDIX D TO PART 52—DESIGN CERTIFICATION RULE FOR THE AP1000

DESIGN

* * * * *

II. DEFINITIONS

A. *Generic design control document (generic DCD)* means the documents containing the Tier 1 and Tier 2 information and generic technical specifications that are incorporated by reference into this appendix.

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III. SCOPE and CONTENTS

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic TSs in the AP1000 Design Control Document, Revision 19, (Public Version) (AP1000 DCD), APP-GW-GL-702, dated June 13, 2011, and the amendments thereto in DCP_NRC_003343, Supplemental Information to Support the AP1000 Design Certification Extension (Non-proprietary), APP-GW-GL-705 Rev. 0, copyright 2021 (Supplemental Information), are approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD and Supplemental Information may be obtained from Zachary S. Harper, Manager, Licensing Engineering, Westinghouse Electric Company, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066, telephone (412) 374-5093. Copies of the generic DCD and Supplemental Information are also available for examination and copying at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available, by appointment, for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone (301) 415-5610, email Library.Resource@nrc.gov. The generic DCD and Supplemental Information can also be viewed online in the NRC Library at <https://www.nrc.gov/reading-rm/adams.html> by searching under ADAMS Accession Nos. ML11171A500 and ML21081A023. If you do not have access to ADAMS or if you have problems accessing documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, at 301-415-3747, or by email at PDR.Resource@nrc.gov. Copies of the AP1000 materials are available in the ADAMS Public Documents Collection. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information

on the availability of this material at NARA, email at fr.inspection@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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D. * * *

3. The generic DCD controls if there is a conflict between the generic DCD and any of the following Safety Evaluations (SEs) for the matters discussed in the “Verification Evaluation Report,” May 11, 2021 (ADAMS Accession No. ML21131A221):

a. SE for Southern Nuclear Company’s (SNC) Vogtle Units 3 and 4, respectively, license amendment request (LAR) 16-026, February 27, 2017 (ADAMS Accession No. ML17024A307);

b. SE for SNC Vogtle Units 3 and 4, respectively, LAR-17-023, April 20, 2018 (ADAMS Accession No. ML18085A628);

c. SE for SNC Vogtle Units 3 and 4, respectively, LAR 17-001, February 1, 2018 (ADAMS Accession No. ML18011A894);

d. SE for SNC Vogtle Units 3 and 4, respectively, LAR-17-003, August 23, 2017 (ADAMS Accession No. ML17213A224);

e. SE for SNC Vogtle Units 3 and 4, respectively, LAR-16-006, February 24, 2017 (ADAMS Accession No. ML16320A174);

f. SE for Florida Power and Light Company’s Turkey Point Nuclear Generating Units 6 and 7, respectively, Chapter 16, “Technical Specifications,” November 10, 2016 (ADAMS Accession No. ML16266A185).

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V. APPLICABLE REGULATIONS

A. * * *

3. The regulations that apply to those portions of the AP1000 design as amended by Supplemental Information are in 10 CFR parts 20, 50, 52, 73, and 100, codified as of **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL***

REGISTER], that are applicable and technically relevant, as described in the SEs listed in paragraphs III.D.3.a through III.D.3.f of this appendix.

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VI. ISSUE RESOLUTION

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B. * * *

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER, Supplement Nos. 1 and 2, and the Verification Evaluation Report (ADAMS Accession No. ML21131A221); Tier 1 and Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3 of the DCD) as amended by Supplemental Information; and the rulemaking records for initial certification, Amendment 1, and the duration extension of the AP1000 design;

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7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's EA for the AP1000 design, Appendix 1B of Revision 15 of the generic DCD, the NRC's final EA for Amendment 1 to the AP1000 design, Appendix 1B of Revision 19 of the generic DCD, and the NRC's final EA relating to the extension of the AP1000 standard design certification, for plants referencing this appendix whose site parameters are within those specified in the severe accident mitigation design alternatives evaluation.

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VII. DURATION OF THIS APPENDIX

This appendix may be referenced for a period of 20 years from February 27, 2006, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

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Dated September 1, 2021.

For the Nuclear Regulatory Commission.

Margaret M. Doane,
Executive Director for Operations.

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